IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7829 OF 2005

Kashinath R. Kolwankar .... Petitioner

versus

Smt. Sunanda Ramakant Desai & ors.... Respondents.

Shriram S. Redij for the petitioner.
A.A. Kocharekar for respondents.

CORAM; P.V. KAKADE, J.

DATED; FEBRUARY 06, 2006.

P.C:

1. Heard both the sides. Perused the record.

2. This petition is moved against the order passed by the trial court dated 26-8-2005 making the notice absolute with an order that issue of jurisdiction and maintainability of the suit be framed in the suit. This petition was moved by the defendant for the relief to frame issues of jurisdction and maintainability of the suit and considered the same as preliminary issue and also for other issue in the suit.

3. Today it is brought to my notice on behalf of the respondent that by order dated 21-01-2006 additional

issues have been framed covering the jurisdiction under sec. 4 and 4A of the Bombay Rent Act and also pertaining to section 91 of the M.C.S. Act which deals with powers of the court to try and entertain the suit. Additional issue is also framed in this regard whether the suit is maintainable under the law, as is raised on behalf of the defendant. The third additional issue is the consequential issue which is also appears to be rightly framed on behalf of the parties.

4. After hearing the learned advocate for the petitioner who tried to raise an objection on the ground that in view of the provisions of sec. 4 and 4A of the Bombay Rent Act no issue was framed by the court. In fact such issue was framed and this court came to know only after it was brought to my notice by the learned advocate for the respondent. In fact there is absolutely no greivance remained of the said petitioner and once the additional issues are framed on 21-1-2006 so far as the question of treating the issue as a preliminary issue is concerned, the lower court has rightly rejected the plea.

5. In the circumstances, I do not see any merit in the petition. Petition is therefore dismissed in limine and cost of the respondant payable by the petitioner is quantified at Rs. 2000/-.

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